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No. 00-391

In the Supreme Court of the United States

STATE OF FLORIDA, PETITIONER

v.

ROBERT A. THOMAS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

BARBARA D. UNDERWOOD
Acting Solicitor General
Counsel of Record

JOHN C. KEENEY
Acting Assistant Attorney General

MICHAEL R. DREEBEN
Deputy Solicitor General

GREGORY G. GARRE
Assistant to the Solicitor General

LISA SIMOTAS
Attorney

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether a police officer may search the passenger compartment of an automobile as a contemporaneous incident of the lawful custodial arrest of the vehicle's recent occupant, when the arrestee exited the vehicle voluntarily rather than upon the direction of the officer.

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INTEREST OF THE UNITED STATES

This case presents the question whether a police officer may search the passenger compartment of an automobile as a contemporaneous incident of the lawful custodial arrest of the vehicle's recent occupant, when the arrestee exited the vehicle voluntarily rather than upon the direction of the officer. The Court's resolution of that question will affect the practices of federal law enforcement agents in the commonly recurring situation in which the recent occupant of a vehicle is arrested. In addition, the disposition of this case will affect the admissibility in federal prosecutions of evidence obtained by federal, state, or local police officers as the result of the search of an automobile incident to the arrest of an individual who has recently occupied the vehicle.

STATEMENT

On the evening of February 28, 1997, Police Officer J.D. Maney of the Polk County, Florida Sheriff's Office and his partner drove to a residence in Lakeland, Florida, on information that marijuana was being sold there. The officers obtained consent to search the home and found marijuana. Other detectives arrived and Officer Maney returned to his patrol car outside the residence. As Officer Maney was sitting in his car, he saw respondent drive up to the house, park in the driveway, and exit his car. Officer Maney got out of his patrol car and met respondent at the rear passenger side of respondent's car. Officer Maney asked respondent for his name and for permission to see his driver's license. A routine check of the license revealed an outstanding warrant for a probation violation. Officer Maney arrested respondent, handcuffed him, and brought him into the house. Officer Maney then returned to respondent's car, searched the passenger compartment, and found methamphetamine in the driver's side door and glove compartment. Five minutes elapsed between the time respondent exited his car and was arrested and Officer Maney searched the car. Pet. App. A3, A16; J.A. 4, 7, 10-11, 115-118.

Respondent was charged with possession of methamphetamine and related narcotics offenses. Before trial, he moved to suppress the evidence seized during the search of his car on the ground that the search was illegal. The trial court granted that motion. Pet. App. A17; J.A. 128-129. The Second District Court of Appeal reversed, holding that the search was valid under *New York* v. *Belton*, 453 U.S. 454 (1981). Pet. App. A15-A19. In *Belton*, this Court held "that when a policeman has made a lawful custodial arrest of the occupant of an

automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." 453 U.S. at 460 (footnotes omitted). The court of appeal reasoned that "the occupant of a vehicle cannot avoid the consequence of the *Belton* rule merely by stepping outside the automobile as officers approach." Pet. App. A17. Thus, according to the court, as long as the arrest is not "a preplanned pretext to conduct a warrantless search of the driver, * * * the bright-line test in *Belton* applies." *Id.* at A19.

The Supreme Court of Florida quashed the decision of the court of appeal. Pet. App. A2-A12. The court recognized that *Belton* applies when the arrestee "has been removed from or has exited the automobile." *Id.* at A10. But the court drew a "distinction" between "arrests initiated by the conduct of an officer" and instances "when an individual voluntarily exits his car without provocation from law enforcement personnel and without knowledge of their presence." *Id.* at A4. In the court's view, "*Belton*'s bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant." *Id.* at A10. "[W]here the first contact the defendant has with the officer occurs after exiting the vehicle," the court believed, *Belton* is inapplicable. *Id.* at A8. Applying that test here, the court held that "*Belton* does not apply," because "[respondent] did not exit the vehicle upon the direction of the law enforcement officer." *Id.* at A10. The court remanded for consideration of whether the search was justified under *Chimel* v. *California*, 395 U.S. 752 (1969), and, in particular, findings as to "whether Officer Maney's safety was endangered or whether the preservation of the evidence was in jeopardy." Pet. App. A10.

Then-Justice Wells dissented from the court's application of *Belton*. Pet. App. A11-A12. As he explained, "*Belton* does not add as a condition 'where the law enforcement officer initiates contact with the defendant.'" *Id.* at A11. "The reason for [*Belton*'s] bright-line rule is officer safety, which is equally as much a concern whether the officer initiates the contact, actually confronts the person, or the person voluntarily exits the vehicle as long as the connection with the vehicle is proximate to the arrest." *Id.* at A11-A12. Justice Wells nevertheless concurred in the judgment based on his view that, under this Court's decision in *Knowles* v. *Iowa*, 525 U.S. 113 (1998), respondent's arrest was not sufficiently "related to the vehicle" to justify the search of the car. Pet. App. A11.

This Court granted certiorari. 121 S. Ct. 755 (2001).[1]

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[1] In opposing certiorari, respondent argued that this Court lacks jurisdiction, because the Florida Supreme Court's decision "is not a final decision as required by 28 U.S.C. § 1257(a)." Br. in Opp. 4. This Court, however, has exercised jurisdiction under Section 1257 over the interlocutory rulings of state courts of last resort, when the State might be prevented from raising the federal question presented to this Court at a later date, even if the State were to prevail on remand. See, *e.g.*, *New York* v. *Quarles*, 467 U.S. 649, 651 n.1 (1984); *Michigan* v. *Tyler*, 436 U.S. 499, 504 (1978). If the State were to prevail on remand in this case, the State would be unable to obtain review in this Court of the Florida Supreme Court's ruling limiting the application of *Belton*, and that federal question would be lost. See also Robert L. Stern et al., *Supreme Court Practice* § 3.8 at 110 (7th ed. 1993) ("[A]n immediate appeal may be available under § 1257 if an important federal issue may entirely escape Supreme Court review as a result of the remand order.") (citing cases). In addition, the remand is limited to a federal question, *i.e.*, whether the search is valid under a *Chimel* analysis. Pet. App. A10. As a result, the remand would not permit the state courts to decide the suppression motion on a

SUMMARY OF ARGUMENT

In *New York* v. *Belton*, 453 U.S. 454 (1981), this Court adopted a bright-line rule to guide the officer in the field in confronting the commonly recurring situation in which the recent occupant of an automobile is arrested. The Court held that police officers may search the passenger compartment of an automobile as a contemporaneous incident of the lawful custodial arrest of the vehicle's occupant. The Florida Supreme Court's decision in this case limits the application of *Belton* to circumstances in which the arrestee exits a vehicle at the direction of law enforcement personnel. That limitation finds no support in precedent or principle, and should be rejected.

The *Belton* rule is grounded on the historic rationales underlying the search-incident-to-arrest doctrine—the need to protect officer safety and to preserve evidence of a crime. As this Court has long recognized, the need to disarm suspects and protect evidence makes it reasonable for police officers to search the person of the arrestee and the area within his immediate control. *E.g.*, *Chimel* v. *California*, 395 U.S. 752 (1969). In *Belton*, this Court adopted the "generalization" that the passenger compartment of an automobile is "generally, even if not inevitably, within the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m]," when "the arrestee is [the car's] recent occupant." 453 U.S. at 460 (internal quotation marks omitted). That generalization enabled the Court to "establish the workable rule [that] this category of cases requires." *Ibid.*

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state law ground that would moot the *Belton* issue raised here. Compare *Jefferson* v. *City of Tarrant*, 522 U.S. 75, 82 (1997).

The rationales underlying *Belton* are implicated "whenever officers effect a custodial arrest" of the recent occupant of a vehicle. *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983). As this Court has recognized, the custodial arrest is a volatile and dangerous event, increasing the risk to the officer that a suspect will grab for a weapon and the likelihood that he will attempt to conceal or destroy evidence of his guilt. *E.g.*, *Knowles* v. *Iowa*, 525 U.S. 113 (1998). In the *Belton* context, those concerns justify the search of a vehicle recently occupied by an arrestee, without regard to whether the arrestee was ordered out of the car by police or voluntarily exited the car oblivious to police. The fact of the arrest, and not the reason that the arrestee exited the car, justifies the *Belton* search.

The Florida Supreme Court's decision not only has no footing in the rationales of *Belton*, but it needlessly blurs the bright line drawn by *Belton*. In *Belton*, this Court recognized that it was essential to provide the officer in the field with a "single familiar standard" to determine when a vehicle search is authorized incident to an arrest. 453 U.S. at 458 (internal quotation marks omitted). The Florida decision undermines that salutary objective by requiring officers to undertake an ad hoc, case-by-case inquiry into the reason that an arrestee exited his vehicle in order to decide whether a search of the passenger compartment is authorized. That inquiry invites the same sort of uncertainty from the standpoint of the officer in the field and disarray in results that this Court sought to foreclose in *Belton*.

The search of respondent's vehicle was valid under a proper application of *Belton*. Respondent was a "recent occupant" of the car; he was subjected to a "lawful custodial arrest" while standing next to the car; and the search of respondent's car was conducted as "a con-

temporaneous incident of that arrest." *Belton*, 453 U.S. at 460. Accordingly, the challenged search was a reasonable and thus lawful intrusion under the Fourth Amendment.

ARGUMENT

A SEARCH OF THE PASSENGER COMPARTMENT OF AN AUTOMOBILE IS JUSTIFIED AS A CONTEMPORANEOUS INCIDENT OF THE LAWFUL CUSTODIAL ARREST OF THE VEHICLE'S RECENT OCCUPANT, WITHOUT REGARD TO THE REASON THAT THE INDIVIDUAL EXITED THE VEHICLE

A. Under *New York* v. *Belton*, Police Officers May Search The Passenger Compartment Of A Car Incident To The Lawful Custodial Arrest Of Any "Recent Occupant" Of The Vehicle

1. The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," and further provides that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. This Court has long recognized that when there has been a lawful arrest, a search of the person of the arrestee and area within his control "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *United States* v. *Robinson*, 414 U.S. 218, 235 (1973); see *Weeks* v. *United States*, 232 U.S. 383, 392 (1914).[2] There are two

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[2] Another "circumstance[] in which the Constitution does not require a search warrant is when the police stop an automobile on the street or highway because they have probable cause to believe it contains contraband or evidence of a crime." *Arkansas* v. *Sanders*, 442 U.S. 753, 760 (1979) (citing cases). See also, *e.g.*,

longstanding rationales for the search-incident-to-arrest doctrine: the need "to remove any weapons that [the arrestee] might seek to use in order to resist arrest or effect his escape," and the need to prevent the "concealment or destruction" of evidence. *Chimel* v. *California*, 395 U.S. 752, 763 (1969); see *Knowles* v. *Iowa*, 525 U.S. 113, 116-117 (1998) (citing cases).

As this Court has recognized, the custodial arrest is a volatile and dangerous event. See *Knowles*, 525 U.S. at 117; *Robinson*, 414 U.S. at 234-235 & n.5. Between 1989 and 1998, for example, 239 of the 682 law enforcement officers who were feloniously killed in the line of duty were slain in arrest situations, making the arrest by far the most dangerous situation that officers commonly confronted during that period. U.S. Dep't of Justice, Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted* 30 (1998) (*Uniform Crime Reports*). In 1998 alone, 16 of the 61 law enforcement officers killed in the line of duty were engaged in arrest situations when they were mortally wounded, and in that same year officers were assaulted while attempting arrests on 10,997 occasions. *Id.* at 29, 86. See also U.S. Dep't of Justice, Federal Bureau of Investigation, *Killed in the Line of Duty: A Study of Felonious Killings of Law Enforcement Officers* 3 (Sept. 1992).[3] Similarly, the moment an

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Maryland v. *Dyson*, 527 U.S. 465, 466-467 (1999) (per curiam); *Pennsylvania* v. *Labron*, 518 U.S. 938, 940 (1996) (per curiam). The "automobile exception" is not applicable in this case, however, because in justifying the challenged search the State has relied upon the fact of respondent's arrest, and not upon any probable cause that Officer Maney may have had to believe that respondent's car contained contraband or evidence of a crime.

[3] Drug-related arrests pose a particularly high risk to police officers. In 1998, for example, seven of the 16 officers who were

individual is placed under formal arrest, he has an increased motive "to take conspicuous, immediate steps to destroy incriminating evidence." *Cupp* v. *Murphy*, 412 U.S. 291, 296 (1973).

Accordingly, this Court has recognized that, "[w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape," and "to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." *Chimel*, 395 U.S. at 762-763. Further, the officer's need to protect himself and to preserve evidence justifies a search of the area within the arrestee's "immediate control," which the Court has defined as "the area from within which [the arrestee] might gain possession of a weapon or destructible evidence." *Id.* at 763. Because "potential dangers lurk[] in all custodial arrests," *United States* v. *Chadwick*, 433 U.S. 1, 14-15 (1977), the validity of a search incident to arrest "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." *Robinson*, 414 U.S. at 235. Rather, "[i]t is the fact of the lawful arrest which establishes the authority to search." *Ibid.*

2. In *New York* v. *Belton*, 453 U.S. 454 (1981), this Court applied those principles to define the permissible scope of a search incident to the arrest of the occupant of an automobile. The *Belton* case arose when a New York state trooper stopped a car for speeding and

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slain in arrest situations were investigating drug-related matters. *Uniform Crime Reports* at 29; see *id.* at 30 (between 1989 and 1998, 40 of the 239 officers feloniously killed in arrest situations were investigating drug-related matters).

thereafter developed probable cause to arrest the occupants of the vehicle for possession of marijuana. The officer ordered the occupants out of the car and placed them under arrest. See *id.* at 455-456. After "patt[ing] down" the arrestees and separating them, the officer searched the passenger compartment of the car and discovered cocaine in the zippered pocket of a jacket that was lying on the back seat. See *id.* at 456. The state courts suppressed the evidence found during the vehicle search on the ground that, when the search took place, "there [was] no longer any danger that the arrestee or a confederate might gain access to the article." *Ibid.* (internal quotation marks omitted). This Court reversed.

The Court began its Fourth Amendment analysis with the principle that "a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area." *Belton*, 454 U.S. at 457. The Court then explained that courts had struggled in applying the search-incident-to-arrest doctrine to the recurring question presented in *Belton*, namely, "whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile *after the arrestees are no longer in it.*" *Id.* at 459 (emphasis added). A review of the case law illustrated that the lower courts had "found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.* at 460. As a result, police officers were left without "a settled principle" to establish the "scope of [their] authority" in this "problematic context." *Id.* at 459-460 & n.3.

The Court admonished that "[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." 453 U.S. at 458 (internal quotation marks omitted). "[T]o establish the workable rule [that] this category of cases requires," the Court adopted "the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Id.* at 460 (quoting *Chimel*, 395 U.S. at 763). And, based on that generalization, the Court held that whenever "a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Ibid.* (footnotes omitted).

In so holding, the Court emphasized that this rule, "'while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found.'" 453 U.S. at 461 (quoting *Robinson*, 414 U.S. at 235). Just as is true with respect to the search of the person of the arrestee, if the arrest is lawful, then the "'search [of the vehicle] incident to the arrest requires no additional justification.'" *Ibid.*[4]

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[4] As Justice Powell explained in his opinion concurring in the judgment of *Robbins* v. *California*, 453 U.S. 420 (1981), which was decided the same day as *Belton*, the *Belton* rule is also supported by the diminished expectation of privacy that an individual has in the circumstances giving rise to its application:

3. As is clear from the facts of *Belton* itself, an individual need not be inside the vehicle at the time of the arrest for *Belton* to authorize a search of the car incident to the arrest. *Belton* applies as long as the arrestee is a "recent occupant" of the vehicle, as was true in the case of Roger Belton himself. 453 U.S. at 460; see *id.* at 462-463 ("[Belton]'s jacket was located inside the passenger compartment of the car in which the respondent had been a passenger *just before he was arrested.*") (emphasis added); 3 Wayne R. LaFave, *Search and Seizure*, § 7.1(b) at 437 & n.26 (3d ed. 1996 & Supp. 2001) ("*Belton* applies whenever the person arrested was * * * the driver of or a passenger in the vehicle just before the arrest.") (collecting cases). Justice Brennan underscored that dimension of *Belton* in his dissent. See 453 U.S. at 463 (The Court's "'bright-line' rule [is] applicable to 'recent' occupants

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> *Belton* trades marginal privacy of containers within the passenger area of an automobile for protection of the officer and of destructible evidence. The balance of these interests strongly favors the Court's rule. The occupants of an automobile enjoy only a limited expectation of privacy in the interior of the automobile itself. This limited interest is diminished further when the occupants are placed under custodial arrest.

Id. at 431 (citations omitted). Cf. *United States* v. *Edwards*, 415 U.S. 800, 808-809 (1974) ("While the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence."). An individual's expectation of privacy in the vehicle he was occupying immediately before an arrest is further diminished by the fact that the Fourth Amendment permits police to inventory the contents of impounded vehicles under standardized procedures at a time and place removed from an arrest. See *Colorado* v. *Bertine*, 479 U.S. 367, 371-372 (1987); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976).

of automobiles."). And the Florida Supreme Court acknowledged it in this case. See Pet. App. A9 ("[T]his Court is mindful that the arrest and subsequent search should not be invalidated merely because the defendant is outside the vehicle.").

As a practical matter, that is the only rule that makes sense. The vast majority of arrests that take place in the *Belton* context occur "after the arrestees are no longer in [the car]." *Belton*, 453 U.S. at 459. See Pet. App. A19 ("We can think of few incidents where a driver will not be out of the vehicle when an arrest is made."). Sound police practice explains why that is so. As this Court has recognized, police officers face an "inordinate risk" when "approach[ing] a person seated in an automobile" and, as a result, officers often order occupants out of the car when conducting an investigation that may lead to an arrest. *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977) (per curiam) (officer may, without particularized justification, order a driver out of the car after a stop of the vehicle); see also *Maryland* v. *Wilson*, 519 U.S. 408, 414 (1997) (rule of *Mimms* extends to passengers). Moreover, whenever the occupant or recent occupant of a vehicle is arrested, it will invariably be more dangerous and less efficient for an officer to search the vehicle while the arrestee is still in it. See LaFave, *supra*, § 7.1(a) at 435 n.15 (The "fairly standard practice" is to remove the arrestee from the car before the search, "both for reasons of safety and because of the practical physical limitations of effecting an arrest in such a confined area.") (internal quotation marks omitted).

B. The *Belton* Rule Applies Without Regard To Whether The Arrestee Exited The Car Of His Own Volition Or Upon The Direction Of Law Enforcement Personnel

The Florida Supreme Court held that *Belton* does not govern this case because respondent "did not exit the vehicle upon the direction of the law enforcement officer." Pet. App. A10. The court reasoned that "*Belton*'s bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant." *Ibid.* That limitation is unsupported and unsound.

1. *Belton*, along with the search-incident-to-arrest cases on which the Court relied in *Belton*, makes clear that the custodial arrest gives rise to the authority to the search. See *Belton*, 453 U.S. at 461 ("'A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.'") (quoting *Robinson*, 414 U.S. at 235). See also, *e.g.*, *United States* v. *Edwards*, 415 U.S. at 802-803; *Chimel*, 395 U.S. at 762-763; *Preston* v. *United States*, 376 U.S. at 367. As explained above (pp. 8-9), that conclusion follows from the potential dangers inherent in every custodial arrest. Those dangers arise as soon as an individual is placed under custodial arrest, regardless of whether the individual initially got out of his vehicle voluntarily or upon the direction of police.

This Court's decision in *Michigan* v. *Long*, 463 U.S. 1032 (1983), confirms that *Belton* is not limited to instances in which the arrestee is ordered out of the car by police. In *Long*, police officers observed a car swerve off the road into a shallow ditch. When they stopped to

investigate, the driver of the car, "the only occupant of the automobile, met the deputies at the rear of the car." 463 U.S. at 1035. The officers did not arrest the driver but merely issued him a ticket. The question presented in *Long* was whether the officers lawfully conducted a protective *Terry*-type search of the passenger compartment of the car during the encounter. Before turning to that question, however, the Court observed that "[i]t is clear * * * that if the officers had arrested Long," instead of simply issuing him a ticket, "they could have searched the passenger compartment" under *Belton*. *Id.* at 1035 n.1. As the Court explained, "*Belton* clearly authorizes [an automobile] search *whenever* officers effect a custodial arrest." *Id.* at 1049 n.14 (emphasis added). That was true in *Long* even though the police officers did not initiate contact with the individual until after he had exited his car.

Knowles v. *Iowa*, 525 U.S. 113 (1998), reinforces the conclusion that the custodial arrest is the pivotal event for purposes of applying the *Belton* rule. In that case, the Court considered whether a police officer may conduct a warrantless search of a vehicle when the officer gives the driver a citation in lieu of arresting him. After examining the twin rationales for the search-incident-to-arrest exception—officer safety and preservation of evidence—the Court held that the search was not authorized. The Court explained that "[t]he threat to officer safety from issuing a traffic citation * * * is a good deal less than in the case of a custodial arrest," and that "the concern for destruction or loss of evidence is not present at all" in the case of a citation. *Id.* at 117, 119. At the same time, however, the Court reaffirmed that when, as here, there *is* a "custodial arrest," police officers may "conduct a full search of the passenger compartment" of an automobile in order "to search for

weapons and protect themselves from danger." *Id.* at 117, 118 (citing *Belton*, 453 U.S. at 460).[5]

2. The Florida Supreme Court's ruling that *Belton* is limited to cases in which the arrestee is directed out of his car by law enforcement personnel finds no support in either of the historic rationales underlying the search-incident-to-arrest doctrine.

As this Court has observed, *Belton* "recogni[zes] that part of the reason to allow area searches incident to an arrest is that the arrestee, who may not himself be armed, may be able to gain access to weapons to injure officers or others nearby, or otherwise to hinder legitimate police activity." *Long*, 463 U.S. at 1050 n.14; see *Belton*, 453 U.S. at 457. The likelihood that an arrestee will lunge for a weapon contained in a vehicle that he recently occupied does not fluctuate based on the circumstances under which the arrestee initially got out of the vehicle. As this Court has emphasized, "[t]he danger to the police officer *flows from the fact of the*

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[5] As noted above, Justice Wells concurred in the result reached by the Florida Supreme Court because he believed that *Knowles* "control[s] the specific facts here," since respondent's arrest was not "made related to the vehicle." Pet. App. A11. That analysis is flawed. This case is distinguishable from *Knowles* in a fundamental respect: unlike the defendant in *Knowles*, respondent was subjected to a lawful custodial arrest. The fact that respondent was not arrested for operating the vehicle is of no moment. As this Court has recognized, "[t]he danger to the police officer flows from the fact of the arrest, * * * and not from the grounds for the arrest." *Robinson*, 414 U.S. at 234 n.5. See *United States* v. *Arango*, 879 F.2d 1501, 1505 (7th Cir. 1989) ("It is the threat of arrest or arrest itself which may trigger a violent response—regardless of the nature of the offense which first drew attention to the subject."), cert. denied, 493 U.S. 1069 (1990). Thus, this Court "treat[s] all custodial arrests alike for purposes of search justification." *Robinson*, 414 U.S. at 235.

arrest, and its attendant proximity, stress, and uncertainty." *Robinson*, 414 U.S. at 234 n.5 (emphasis added); see *Washington* v. *Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."). Thus, regardless of *why* an individual gets out of his car, "the 'bright line' that [this Court] drew in *Belton* clearly authorizes [a search of the car] *whenever* officers effect a custodial arrest." *Long*, 463 U.S. at 1049 n.14 (emphasis added).

The same conclusion follows with respect to the other rationale underlying *Belton*. As this Court has recognized, upon arrest, everyone has an increased motive to conceal or destroy incriminating evidence. See *Belton*, 453 U.S. at 457; *Chimel*, 395 U.S. at 763; see also LaFave, *supra*, § 5.2(c) at 78 ("[A]s of the moment of arrest the arrestee is motivated to conceal, destroy or furtively abandon any incriminating evidence."). The likelihood that an arrestee will attempt to destroy evidence in a car—and the officer's interest in preventing such efforts—does not wax and wane based on whether an arrestee got out of his car of his own volition or upon an officer's bidding. Either way, the arrestee will have the same motive to conceal or destroy incriminating evidence that may be in the car. And, as this Court has stated, the need to preserve the integrity of such evidence following the arrest "justifies an 'automatic' search" under *Belton*. *Long*, 463 U.S. at 1049 n.14. See also *Glasco* v. *Commonwealth*, 513 S.E.2d 137, 142 (Va. 1999) ("[A] knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact.").

In short, whether an individual is oblivious to police when he exits his car or is directed out of the car by police, the likelihood that the individual will attempt to

grab for a weapon or destroy evidence inside the car is a product of the fact that the individual is placed under custodial arrest, and not of his state of mind when he gets out of the car.

3. The Florida Supreme Court's decision needlessly blurs the bright line adopted by *Belton*, and will engender the same sort of uncertainty from the standpoint of the officer in the field and disarray in results that this Court sought to preclude in *Belton*.

In *Belton*, this Court recognized that "'[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" 453 U.S. at 458 (quoting *Dunaway* v. *New York*, 442 U.S. 200, 213-214 (1979)). See *Robbins* v. *California*, 453 U.S. at 431 (Powell, J., concurring in judgment) (*Belton* recognizes that "practical necessity requires that we allow an officer in these circumstances to secure thoroughly the automobile without requiring him in haste and under pressure to make close calculations about danger to himself or the vulnerability of evidence."). At the same time, the Court recognized that the interests protected by the Fourth Amendment would better be served by a rule that, "in most instances, makes it possible [for police officers] to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement." 453 U.S. at 458, 459 n.1 (internal quotation marks omitted). See LaFave, *supra*, § 7.1(c) at 445 ("*Belton* is grounded upon the compelling proposition that it is often advantageous to both privacy interests and law enforcement interests if rules of police conduct are stated in terms of easily understood standardized procedures which may be routinely followed.") (footnote omitted).

The "search incident to arrest is by far the most common variety of police search practice." LaFave, *supra*, § 5.2(c) at 77-78. The need for bright-line rules in this frequently recurring situation is as compelling today as it was when *Belton* was decided. And, since *Belton*, the Court has repeatedly reaffirmed the principle that a case-by-case approach to recurring Fourth Amendment issues may fail to "provide a workable accommodation between the needs of law enforcement and the interests protected by the Fourth Amendment." *Oliver* v. *United States*, 466 U.S. 170, 181 (1984). See also, *e.g.*, *Wyoming* v. *Houghton*, 526 U.S. 295, 305-306 & n.2 (1999); *id.* at 307 (Breyer, J., concurring); *California* v. *Acevedo*, 500 U.S. 565, 576-577 (1991); *Colorado* v. *Bertine*, 479 U.S. 367, 375 (1987); *Illinois* v. *Andreas*, 463 U.S. 765, 772 (1983); *Illinois* v. *Lafayette*, 462 U.S. 640, 648 (1983).

The Florida Supreme Court's decision requires the officer in the field to undertake precisely the sort of indeterminate, case-by-case inquiries that this Court sought to foreclose in *Belton*. Under the Florida decision, the determination whether *Belton* permits the search of an arrestee's car requires the officer to make an individualized determination as to the reason that the arrestee got out of his car. If the officer concludes that the arrestee exited his car because the officer "actually confront[ed]" or "signal[ed] confrontation" with him, or because the arrestee sought to "avoid the consequences of *Belton*," then *Belton* applies and the officer may search the car incident to the arrest. Pet. App. A9-A10. In contrast, if the officer feels that the arrestee "voluntarily exit[ed] his car without provocation from law enforcement personnel and without knowledge of their presence," then *Belton* does not apply and the officer must conduct an analysis of the

Chimel factors—*i.e.*, the threat to the officer's safety and destruction of evidence in the particular case—before resolving whether he may search the car incident to the arrest. *Id.* at A4, A9-A10.

That regime requires law enforcement personnel to make a variety of ad hoc determinations—subject to second-guessing by a court—in the "only limited time" that they have to react to "the specific circumstances they confront" in arresting the recent occupant of a vehicle, further compromising officer safety in this volatile situation. *Belton*, 453 U.S. at 458 (internal quotation marks omitted).[6] The regime will inevitably produce divergent results on similar facts from one officer or case to the next. And the regime accordingly is a far cry from the "workable rule [that] this category of cases requires." *Id.* at 460.

Respondent argues (Br. in Opp. 9-10) that "[w]ithout requiring that the officer confront the arrestee or signal

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[6] For example, in deciding whether a *Belton* search is authorized, officers would have to ascertain (1) whether the arrestee was aware of the police when he got out of the car, a determination that may depend on whether the police are in uniform or a marked squad car, police lights or sirens have been activated, or the arrestee was impaired in a manner that could have affected his awareness of the police; (2) whether, if the arrestee *appeared* to get out of the car voluntarily, the arrestee nevertheless did so to avoid the application of *Belton*, a determination that requires the officer to discern whether an arrestee knew about *Belton*; and (3) whether an officer sufficiently "signal[ed] confrontation" (Pet. App. A10) with an arrestee, such that the arrestee was getting out of the car in response to the officer rather than for another reason. The analysis would be more complicated when an officer confronts a vehicle with more than one occupant, since it is possible that occupants will exit a vehicle for different reasons, which may permit one arrestee, but not another, to challenge a search of the car incident to his arrest.

confrontation [with] the arrestee while he is still in the vehicle, the officer and the court[s] would have a difficult time deciding whether or not the arrestee was a 'recent occupant' of the vehicle." That argument should be rejected. There is no doubt that an individual is the "recent occupant" of a vehicle when, as here, the officer sees the individual get out of the car and contacts him moments later beside the car. That is the situation in which the question presented is most likely to arise and, in deciding this case, the Court need go no further than considering the application of *Belton* in that context (*i.e.*, the one presented here).[7]

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[7] In other contexts, courts have considered whether, or under what circumstances, *Belton* applies when the recent occupant of a vehicle has gone beyond the immediate vicinity of the car before he is arrested. Compare, *e.g.*, *United States* v. *Strahan*, 984 F.2d 155, 159 (6th Cir. 1993) (*Belton* does not apply where individual was "approximately thirty feet from his vehicle when arrested," such that "the passenger compartment of the vehicle was not within [his] 'immediate control' at the time of the arrest"); *United States* v. *Fafowora*, 865 F.2d 360, 361, 362 (D.C. Cir.) (*Belton* does not apply where individuals were "one car length away" from vehicle at the time of arrest, such that vehicle "was not within the 'immediate surrounding area' into which [the suspects] might have reached" at time of arrest), cert. denied, 493 U.S. 829 (1989), with *United States* v. *Franco*, 981 F.2d 470, 472 (10th Cir. 1992) (*Belton* applies where individual "was arrested in a Government truck that was parked in close proximity to his vehicle"); *United States* v. *Arango*, 879 F.2d at 1506 (*Belton* applies where individual was arrested "one block" away from car, where search of car was conducted after individual was returned to area near car, because officer "was in need of medical attention" there). Any doubt, however, as to whether *Belton* applies in such outlying cases provides no reason to deny officers the protections afforded by *Belton* in the more typical situation presented here. Cf. *United States* v. *Alvarez-Sanchez*, 511 U.S. 350, 359-360 (1994); *Albright* v. *Oliver*, 510 U.S. 266, 291 (1994) (Souter, J., concurring in judgment).

4. The Florida Supreme Court's decision could have the harmful unintended consequence of increasing the risks inherent in encounters between police and the recent occupants of vehicles. Although the Florida Supreme Court stated that "occupants of a vehicle cannot avoid the consequences of *Belton* merely by stepping outside of the vehicle as the officers approach," Pet. App. A9-A10, its decision may nevertheless encourage suspects to exit their vehicles before ordered to do so by police in an attempt to render their vehicles "search proof" for purposes of *Belton*. See *Glasco* v. *Commonwealth*, 513 S.E.2d at 142. At the same time, the Florida rule may lead police to more quickly initiate contact with vehicle occupants, in order to ensure that *Belton* will apply in the event of an arrest. See *State* v. *Wanzak*, 598 N.W.2d 811, 815 (N.D. 1999). Either impulse will increase the confrontation, unpredictability, and thus perils posed by *Belton* encounters, creating a more volatile world for the officer in the field than the one that existed before *Belton*.

Furthermore, the Florida decision fails to take into account that in many situations, including undercover operations, it may be undesirable for police to announce their presence and initiate contact with an individual *before* the individual gets out of a vehicle. Cf. *Shipley* v. *California*, 395 U.S. 818, 819 (1969) (per curiam). That may be particularly true where police are on the lookout for a particular suspect, whose identity may not be known or discernable until the suspect exits a vehicle, or where police do not develop suspicion to investigate until an individual gets out of a vehicle, such as where officers observe an individual get out of a car brandishing a firearm or carrying contraband.

C. The Search Of Respondent's Car Was Valid Under *Belton*, Because It Was A Contemporaneous Incident Of Respondent's Lawful Custodial Arrest

1. The search of respondent's vehicle was a valid search incident to respondent's arrest under *Belton*. Respondent was a "recent occupant" of the car. *Belton*, 453 U.S. at 460. Officer Maney saw respondent drive up to the residence, park his car, and get out of the vehicle. Pet. App. A3. Respondent was subjected to a "lawful custodial arrest" only moments after he exited his car, while standing in practically the same spot in which Roger Belton stood during his arrest—"by the side of the car." 453 U.S. at 457, 460 (internal quotation marks omitted). And Officer Maney searched the passenger compartment of respondent's car as "a contemporaneous incident" of respondent's arrest. *Id.* at 460. Only five minutes elapsed between the time respondent exited his car and was arrested and the search occurred. Pet. App. A3.

2. The fact that Officer Maney handcuffed respondent and brought him into the nearby residence before searching the car does not alter that conclusion.[8] By its terms, *Belton* only applies once an individual has been placed under "lawful custodial arrest." 453 U.S. at 460. In effecting such arrests, it is commonplace for police officers to handcuff the arrestee and remove him from the immediate vicinity of the car before conducting a *Belton* search. As numerous courts of appeals have

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[8] Respondent has not argued that *Belton* is inapplicable on the ground that he was restrained before his car was searched, and that issue was not decided by the Florida courts below and is not within the question on which this Court granted certiorari. See Pet. i. In any event, as we explain below, this issue provides no basis for avoiding the application of *Belton* in this case.

recognized, *Belton* does not require law enforcement officers to forego that prudent police practice in order to proceed with a *Belton* search. See *United States* v. *Mitchell*, 82 F.3d 146, 152 (7th Cir.) ("The fact that [the arrestee] had been handcuffed and placed in the police vehicle just prior to the commencement of the search that yielded the firearm does not affect the lawfulness of the search"; "it does not make sense to prescribe a constitutional test that is entirely at odds with safe and sensible police procedures.") (internal quotation marks omitted), cert. denied, 519 U.S. 856 (1996).[9]

That common-sense conclusion comports with the bright line drawn by *Belton*. In *Belton*, this Court rejected the proposition that, "[w]hen the arrest has been consummated and the arrestee safely taken into

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[9] See also, *e.g.*, *United States* v. *Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000) (A "search is valid under *Belton* without regard to the fact that the search occurred after Defendant had been restrained."); *In re Sealed Case*, 153 F.3d 759, 768 n.4 (D.C. Cir. 1998) (*Belton* search may be conducted after arrestee has been handcuffed; collecting cases); *United States* v. *Sholola*, 124 F.3d 803, 817 & n.15 (7th Cir. 1997) (courts have "consistently rejected" the argument that *Belton* is inapplicable when the arrestee has been handcuffed and placed in squad car; collecting cases); *United States* v. *Doward*, 41 F.3d 789, 791 n.1 (1st Cir. 1994) ("[T]he great weight of authority * * * holds that *Belton*'s bright-line rule applies even in cases where the arrestee is under physical restraint and at some distance from the automobile during the search.") (collecting cases), cert. denied, 514 U.S. 1074 (1995); *United States* v. *Lacey*, 86 F.3d 956, 971 (10th Cir.), cert. denied, 519 U.S. 944 (1996); *United States* v. *Moorehead*, 57 F.3d 875, 878 (9th Cir. 1995); *United States* v. *Valiant*, 873 F.2d 205, 206 (8th Cir.), cert. denied, 493 U.S. 837 (1989); *United States* v. *White*, 871 F.2d 41 (6th Cir. 1989); LaFave, *supra*, § 7.1(c) at 448 ("[U]nder *Belton* a search of the vehicle is allowed even after the defendant was removed from it, handcuffed, and placed in the squad car."); *id.* at 448-449 n.79 (collecting cases).

custody, the justifications [for a warrantless search] cease to apply," because "at that point there is no possibility that the arrestee could reach weapons or contraband." 453 U.S. at 465-466 (Brennan, J., joined by Marshall, J., dissenting). Instead, the Court adopted the "generalization" that weapons or contraband within the passenger compartment of a car are "generally, even if not inevitably, within the area into which an arrestee might reach." *Id.* at 460 (internal quotation marks omitted). That generalization enabled the Court to establish a bright-line rule authorizing automobile searches incident to the arrest of any recent occupant of a car, without regard to the "probability in a particular arrest situation that weapons or evidence would in fact be found [in the car]." *Id.* at 461 (internal quotation marks omitted). And, as even the *Belton* dissenters acknowledged, the obvious import of that rationale is that *Belton* applies even after the arrestee has been handcuffed and moved away from the car. See *id.* at 468 ("Under the approach taken today, the result would presumably be the same even if Officer Nicot had handcuffed Belton and his companions in the patrol car before placing them under arrest.").[10]

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[10] In *Belton*, this Court rejected the argument that the search was invalid "because Trooper Nicot, by the very act of searching the respondent's jacket and seizing the contents of its pockets, had gained 'exclusive control' of them." 453 U.S. at 462 n.5. As the Court explained, "under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control.'" *Ibid.* Similarly, an officer should not be barred from searching a vehicle incident to the arrest of its recent occupant just because the officer has apparently seized control over the arrestee by handcuffing him and moving him from the immediate vicinity of the car. Cf. *United States* v. *Brown*, 671 F.2d 585 (D.C. Cir. 1982) (per curiam).

Even after individuals are taken into custody and restrained, they continue to pose a grave threat to law enforcement personnel. See, *e.g.*, *Plakas* v. *Drinski*, 19 F.3d 1143, 1145 (7th Cir.) (suspect handcuffed in back-seat of squad car escaped from squad car and later confronted police), cert. denied, 513 U.S. 820 (1994); *United States* v. *Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir.) (citing incidents in which police officers were slain by handcuffed arrestees), cert. denied, 510 U.S. 955 (1993).[11] The bright-line *Belton* rule permits police officers to protect themselves against the small but nevertheless real risk that an arrestee who has been handcuffed or otherwise restrained will escape from custody by ensuring that, if the arrestee does somehow manage to break free, he will not succeed in retrieving a weapon from a nearby vehicle or in reaching into that vehicle and destroying evidence of a crime.

3. At the same time, there is a limit on how *Belton* searches may be conducted. *Belton* requires that the search of the vehicle be undertaken as "a contemporaneous incident of th[e] arrest." 453 U.S. at 460. Compare, *e.g.*, *Dyke* v. *Taylor Implement Co.*, 391 U.S. 216, 220 (1967) (search of arrestee's car was "too remote in time or place to [be] incidental to the arrest," where

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[11] In 1998, four officers were killed and 6,881 were assaulted while in the process of handling, transporting, or maintaining the custody of prisoners. *Uniform Crime Reports* at 29, 86. In addition, two veteran police officers were killed on the evening of May 19, 1998, when a handcuffed suspect in the back seat of their patrol car managed to free himself, retrieve one of the officer's guns, and mortally wound both officers. *Id.* at 49. Another officer was killed on January 12, 1998, by an individual who had been ordered out of his car, when the individual managed to free himself during a struggle with the officer, retrieve a rifle from his car, and mortally wound the officer. *Id.* at 50.

search did not take place until the arrestee was in custody inside the courthouse and his car had been moved by police from the site of the arrest to the street outside the courthouse); *Preston* v. *United States*, 376 U.S. at 368 (search of arrestee's car was not incident to arrest when search was conducted after the car had been towed from the scene of the arrest to a garage); see also *United States* v. *Chadwick*, 433 U.S. at 15 (search of footlocker was too remote when it was conducted "more than an hour" after arrest); see also *Belton*, 453 U.S. at 461-462 (distinguishing *Chadwick*).

As the District of Columbia Circuit has explained, a search meets the contemporaneous incident standard whenever "it is an integral part of the lawful custodial arrest process." *United States* v. *Abdul-Saboor*, 85 F.3d 664, 668 (1996) (internal quotation marks omitted). Thus, in deciding whether a search incident to arrest is proper, "[t]he relevant distinction turns not upon the moment of arrest versus the moment of the search but upon whether the arrest and search are so separated in time or by intervening events that the latter cannot be fairly be said to have been incident to the former." *Ibid.* Under that approach, the search of respondent's vehicle was plainly conducted as a contemporaneous incident of respondent's arrest, because the search and arrest were part of "one continuous event," *id.* at 669, which began when respondent got out of his car and was arrested and ended just five minutes later when Officer Maney searched the car.

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Because the search of respondent's vehicle was conducted as a contemporaneous incident of respondent's lawful custodial arrest, the search is valid under

Belton and, therefore, constitutes a reasonable intrusion within the meaning of the Fourth Amendment.

CONCLUSION

The judgment of the Supreme Court of Florida should be reversed.

Respectfully submitted.

BARBARA D. UNDERWOOD
Acting Solicitor General

JOHN C. KEENEY
Acting Assistant Attorney General

MICHAEL R. DREEBEN
Deputy Solicitor General

GREGORY G. GARRE
Assistant to the Solicitor General

LISA SIMOTAS
Attorney

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